

**CENTRAL ADMINISTRATIVE TRIBUNAL
AMHEDABAD BENCH**

Review Application No. 48 of 2015 in O.A. No. 248 of 2014
Ahmedabad, this the 11th day of December, 2018

CORAM :

Hon'ble Ms. Archana Nigam, Member (A)

Hon'ble Sh. M.C. Verma, Member (J)

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Date of Reserve : 26/11/2018

Date of Order : 11.12.2018

Shri Maheshbhai S/o Shri Parshottamdas Bhatt, Ex.S.S., aged 60 years, Residing at Block No. 8, Jodeshwar Nagar-I, Amreli.

.....Applicant

(By Advocate : Mr.M.S.Trivedi)

VERSUS

- 1- Union of India through the General Manager, Western Railway, Churchgate, Mumbai – 400 020.
- 2- The Divisional Railway Manager, O/o DRM, Western Railway, Divisional Office, BVP, Bhavangar.

....Respondents

(By Advocate Ms.A.B.Makwana)

O R D E R

Per M.C.Verma, Member (Judicial)

In instant R.A., applicant has, inter alia, prayed to review / recall the Order of this Tribunal dated 30.09.2015 passed in OA No. 248 of 2014, on the ground that the Tribunal has committed grave error which requires review.

2. This is the fourth round of litigation of applicant before this Tribunal. The previous history, as has emerged, in brief, is that applicant was working as a Head Booking Clerk in office of S.S. Wansjalia. He firstly approached this Tribunal in OA No. 124/1997 with grievance that respondents instead of placing him in the grade of Rs. 1600-2660, after medical de-categorisation, placed him in the

grade of Rs. 1400-2300. According to applicant he at relevant time was working as ASM, SVKD in the scale of Rs. 1400-2300 and on being found fit for promotion was promoted, vide order dated 08.05.1996, as Dy. S.S. in the scale of Rs. 1600-2660. However, before joining as Dy. S.S., he was medically de-categorised pursuant to which he was posted as Head Clerk in the scale of Rs. 1400-2300. This Tribunal by its order dated 15.12.1997 passed in O.A. No. 124/1997 directed the respondents to examine whether any vacant post was available against which he could be accommodated in the non-safety category in scale of Rs. 1600-2660 in clerical cadre in the OCMG group, and if so to accommodate him on such post.

2.1 According to applicant in spite of said direction, in O.A. No. 124 of 1997, respondents did not accommodate him on the post carrying the scale of Rs. 1600-2660 but he was posted as Head Clerk and hence, he approached this Tribunal second time in O.A. No. 402/1998. In O.A. No. 402/1998, applicant contended that the respondents, to deprive him the posting in the equivalent post in the pay scale of Rs. 1600-2660 mis – interpreted the provisions of Indian Railway Establishment Manual [IREM]. The Tribunal rejected the claim of the applicant for giving alternative posting in the equivalent grade of Rs. 1600-2660 vide order dated 04.02.2003 dismissed O.A. No. 402/1998.

2.2 Being aggrieved by the orders of this Tribunal passed in O.A. No. 402/1998, applicant preferred S.C.A. No. 17055 of 2004, on the file of Hon'ble High Court of Gujarat. The Hon'ble High Court of Gujarat by its order dated 21.01.2014 pleased to allow the S.C.A.

partly, holding that petitioner would be entitled to proforma promotion as Dy. S.S. in the scale of Rs. 1600-2660 at least not later than 10.06.1998. However, petitioner shall not claim any monetary benefit and consequential benefits thereafter if any accrued in his favour.

2.3 In compliance of the above orders of the Hon'ble High Court of Gujarat, respondents passed order No. ET/M/177 dated 18/24.3.2014 and granted proforma promotion to the applicant to the post of Dy. S.S. in the scale of pay of Rs. 1600-2660 / 5500 – 9000 w.e.f. 1996 without monetary benefits. Being aggrieved by the order of the respondents, which was issued in compliance with the above order of the Hon'ble High Court of Gujarat, applicant third time approached this Tribunal and presented O.A. No. 248/2014 assailing the order, bearing No. ET/M/177, on the ground that vide said order he was merely treated as promoted to the Dy. S.S. in the scale of pay of Rs. 1600-2660 / 5500 – 9000 w.e.f. 11.05.1996, without extending consequential monetary benefits accrued to him and thus the order is illegal and arbitrary. He also sought a direction therein, to grant monetary benefit of promotion as Dy. S.S. in the scale of Rs. 6500-10500 w.e.f. 10.06.1998 along with interest @ 12% p.a. Notice of O.A. No. 248/2014 was issued and pursuant thereto, respondents filed their detailed reply contending that impugned order was passed strictly in terms of the orders of the Hon'ble High Court of Gujarat, dated 21.01.2014, passed in SCA No. 17055 of 2004 and did contend that applicant is entitled for proforma promotion without monetary and consequential benefits.

2.4 Said O.A. No. 248 of 2014 was dismissed by the Tribunal, vide order dated 30.09.2015 and instant Review application has been filed for review / recall Order of dismissal of O.A. No. 248 of 2014.

2.5 The applicant in instant R.A. after giving the past history has pleaded that he is the applicant of O.A. No. 248/2014 and that in said O.A. he challenged the order dated 24.3.2014 of the respondents for not granting of consequential benefits flowing due to his promotion as Dy.S.S., in the scale of Rs. 1600-2600 / 5500-9000 w.e.f. 11.5.1996. It is his contention that consequential benefits includes notional pay fixation in the scale of Rs. 5500-9000 w.e.f. 11.5.1996 without monetary benefits and includes his further promotion from the date his junior were promoted. Applicant also pleaded that a junior cannot get higher pay than his senior and that after being promoted as Dy.S.S. in the scale ERs. 1600-2660 w.e.f. 11.11.1996 he was entitled to all consequential benefits, i.e. further promotion at par with his juniors, except arrears. The applicant also pleaded that as far as observation of Tribunal enshrined in para 16 of the Order relates no such query was put to the applicant by the Tribunal.

3. Respondents have filed their written statement to this R.A. and has stated that applicant was given promotion in the scale of Rs. 1600-2600 / 5500-9000 w.e.f. 11.5.1996 the date, when his junior Sh. K.J.Makwana was promoted and it was clarified that applicant shall not claim any monetary benefit as per the order of Hon'ble High Court in Special Civil Application No. 17055 of 2004. In the judgment of the Hon'ble High Court the scale mentioned was of Rs. 1600-2660 which was to be given from May 1996 but not later

than 10.6.1996. It has been averred that applicant is seeking consequential promotion from 1998 in comparison to the promotion given to his junior in the grade Rs. 6500-10000. The respondents stated further that it was open for the applicant to move Hon'ble High Court for any clarification, which he did intent and having failed to do so, he approached the Tribunal and this Tribunal has rightly rejected the O.A. vide its order dated 30.09.2015. Paras 16 and 17 of this Tribunal's order has been emphasized by respondents and it is prayed that respondents have complied with the direction of Hon'ble High Court rendered in Special Civil Application No. 17055 of 2004 and this R.A. is merit less and, it be dismissed.

4. We have heard the counsel for both the parties and perused the records.

5. Learned counsel Sh. M.S.Trivedi, who appeared for applicant explained that the specific grievance of the applicant before the Tribunal in O.A. No. 248 of 2014 was that by making statement before Hon'ble High Court in SCA No. 17055 that applicant will not claim pay and arrears, applicant has not waived of his right of further consequential benefits by that statement, accrued to the applicant from 1998 i.e. the date his junior was/were promoted to the higher grade of Rs. 6500-10500. Learned counsel urged that applicant after notional / proforma promotion as Dy. S.S. was entitled to got consequential benefits and further promotion at par with his juniors. That applicant had been given posting in the scale Rs. 1600-2660 / 5500-9000 w.e.f. 11.5.1996 by the respondents in pursuance to Hon'ble High Court's order but his

junior have been promoted w.e.f. 1998 and that benefit of promotion was not extended to him. During arguments, learned counsel Mr. M.S. Trivedi also stated at Bar that applicant has since retired and that before retirement he was given promotion to the post of S.S. Upon query as to when applicant was given proforma fixation to the post of S.S. and when his junior was given promotion, learned counsel claimed inability and submitted that he may inform later.

6. Learned counsel Ms. A.B.Makwana has submitted that R.A. is devoid of merits, she urged that the Tribunal has passed a comprehensive and reasoned order, taking note of entirety and thus R.A. is devoid of merits. She referred paras 16 and 17 of the order of the Tribunal and contended that when the matter was before the Hon'ble High Court, applicant made categorical statement that he would not claim monetary and consequential benefits and, therefore, instant R.A., which has been preferred with ulterior motive to claim the alleged consequential benefits from back door, needs to be dismissed with cost.

7. To facilitate to resolve the controversy raised in this petition, it would be expedient to quote paras 13 and 14 of judgment passed by Hon'ble High Court in SCA No. 17055/2004 passed in O.A. No. 248/2014 which reads as under :

"13. Ms. A.B. Makwana, learned counsel for the respondents by drawing our attention to the orders of the Hon'ble High Court of Gujarat in SCA No. 17055 of 2004, argued that the claim of the applicant for monetary benefits has no basis much less a legal basis. She pointed out that the impugned order came to be passed by the respondents in compliance with the orders of Hon'ble High Court of Gujarat in SCA No. 17055 of 2004 dated 21.1.2014.

14. She drew our attention to the operative portion of the said order of Hon'ble High Court of Gujarat in SCA 17055 of 2004 dated 21.1.2014 at Annexure A-2 extracted at paragraph 8 above."

8. We have considered the arguments put forth by the learned counsel for the parties as also carefully perused the order delivered in the O.A. (supra). Operative portion of which reads as under : -

"16. By referring to the operative portion of the order of Hon'ble High Court of Gujarat at paragraph 13, when we put a specific query to the learned counsel for applicant, Shri M.S. Trivedi, that as to how the right submission made by him before the Hon'ble High Court of Gujarat turn to be a wrong one subsequently, he submitted that the Hon'ble Supreme Court in many such occasion granted and ordered for grant of monetary benefits also. In turn, to a question, if so why the same was not urged before the Hon'ble Supreme Court, he has no answer to this query. Besides on going through the orders of Hon'ble High Court of Gujarat at Annexure A-2, we find that the Hon'ble High Court of Gujarat has categorically held that the applicant is entitled only to proforma promotion as Dy. S.S. in the scale of Rs. 1600-2660 and that further it clarified that based on such promotion, the applicant is not entitled for any monetary benefits and the same is further reaffirmed in view of the words as para 14. The claim / prayer of the applicant before the Hon'ble High Court of Gujarat is for promotion as Dy. S.S. in the scale of Rs. 1600-2660 alongwith the monetary benefit. The Hon'ble High Court did not grant the prayer as sought by him, but the SCA was allowed in part. The issue whether the applicant is entitled to monetary benefit attained finality. Therefore, the present claim of the applicant for monetary benefit is hit under the principles of resjudiciata. The relief claimed by the applicant for monetary benefit has been expressly refused by the Hon'ble High Court.

17. For the foregoing, we are of the opinion that if the prayers sought by the applicant in the instant OA were to be granted, the same would result in re-writing the orders of Hon'ble High Court of Gujarat which none shall dare to do so except the Hon'ble Supreme Court. The fact that his claim for monetary benefit was disallowed by the Hon'ble High Court is well within the knowledge of the applicant. In spite of the same he has filed the present OA, seeking the monetary benefit which was specifically rejected by the Hon'ble High Court. Besides, we also noticed that the learned Advocate who appeared for the applicant before the Hon'ble High Court himself appears for him in the present OA. He ought to have given proper advice to the applicant. Thus, it is clear that the respondents were unnecessarily dragged before this Tribunal, for which they have had to engage the services of a legal practitioner by spending public money. Hence, the respondents are required to be compensated. Besides, he unnecessarily wasted the precious time of this Tribunal. Therefore, we hold that the respondents are entitled to calculate the total expenses incurred by them towards legal expenses of the present OA and to recover the same from the salary / pension of the applicant, if already retired in three equal monthly instalments subject to any statutory limitations. Thus, the OA richly deserves to be dismissed with compensatory costs to the extent observed in the above paragraph. Accordingly the same is dismissed."

9. It is not disputed that the applicant, during hearing of SCA No. 1795 of 2014 has made a categorical statement before Hon'ble High Court that he would not claim monetary and consequential benefits and the Hon'ble High Court thus held that the applicant is entitled to only proforma promotion as Dy. S.S. and that based upon such promotion the applicant would not entitle to any monetary benefits and consequential benefits.

It transpires from the submissions made by Mr. Trivedi, counsel for applicant asserted, during hearing that applicant has been given further promotion to the post of S.S. but he could not clarify who is that junior and w.e.f. which date said promotion was given to junior and to applicant. Any how, scope of review is very limited one. Submissions qua promotion of applicant to the post of S.S. are not the part of pleadings of the O.A. and the same are also not the part of pleadings of this R.A. itself.

10. Having taken note of entirety, the back grounds facts of the matter especially the order of Hon'ble High Court passed in aforesaid SCA and other circumstances, we found that this application for review is devoid of merit and thus deserve dismissal and accordingly is dismissed.

11. Review Application stands dismissed and accordingly disposed of.

(M.C.Verma)
Member (J)

(Archana Nigam)
Member (A)